

C O P Y

*in opinion*

416-2

February 6, 1957

His Excellency, Lane Dwinell  
Governor of New Hampshire  
Concord, New Hampshire

Dear Governor Dwinell:

Mr. Perkins recently discussed with us a proposed bill which would exempt from taxation as stock in trade

"used or second-hand tangible personal estate received by merchants, shopkeepers, mechanics or tradesmen in partial payment for new stock in trade . . . even though employed in their trade or business."

Mr. Perkins advises that you wish our views on the constitutionality of the proposal. We reply that in our opinion the bill if enacted into law would be of doubtful constitutionality.

The power of the Legislature to classify property in matters of taxation between exempt and non-exempt has been discussed on many occasions by the Supreme Court. While always affirming the existence of the power, the Court has consistently stated that "just reasons" must exist for such selection as is made. A proposition at least as well settled is that while property may be classified, taxpayers may not.

The present proposal would seem liable to offend with respect to both of these principles.

Thus identical articles in the hands of a dealer, under the proposal, are included as stock in trade or not depending on whether traded in on new or used property. A further ground for distinction appears in whether the goods are received in partial payment or in full payment of new goods. Under the language of the proposed legislation, goods constituting partial payment may be exempt - nothing is said, however, concerning the case should the property received exceed in value the cost of the new goods. Since

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the Supreme Court has never attempted to delineate precisely what are "just reasons" for classification as exempt or non-exempt, one hesitates categorically to state that the foregoing distinctions do not constitute such reasons. One can only suggest, as a matter of opinion, that the reasons for the classification provided in the bill are indeed tenuous.

The objectionable quality with respect to the classification of taxpayers seems the more obvious. Persons dealing in new property receive the benefit of the exemption - while those dealing exclusively with used property do not.

These considerations lead to the conclusion that the Supreme Court would probably declare the proposal to be in violation of the Constitution.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW/aml